

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOHN PIEPER,

Petitioner,

vs.

ROB JEFFREYS,

Respondent.

8:23CV9

MEMORANDUM AND ORDER

The matter is before this Court on remand from the Eighth Circuit Court of Appeals, seeking a determination of whether this Court should issue a certificate of appealability. [Filing No. 31](#). For the reasons set forth below this Court finds that no certificate of appealability shall be issued.

A petitioner cannot appeal an adverse ruling on a petition for writ of habeas corpus under § 2254 unless granted a certificate of appealability. [28 U.S.C. § 2253\(c\)\(1\)](#); [Fed. R. App. P. 22\(b\)\(1\)](#). A certificate of appealability cannot be granted unless the petitioner “has made a substantial showing of the denial of a constitutional right.” [28 U.S.C. § 2253\(c\)\(2\)](#). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in [Slack v. McDaniel](#), 529 U.S. 473, 484-85 (2000).

In this case, the Court has applied the appropriate standard and determined that Petitioner is not entitled to a certificate of appealability and specifically finds that a

certificate of appealability is not appropriate because Petitioner is trying to appeal from a non-final order. See [Filing Nos. 23; 25](#). Accordingly, the Court will not issue a certificate of appealability in this case.

Dated this 16th day of November, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon". The signature is stylized with a large, circular initial "J" and a long horizontal stroke at the end.

Joseph F. Bataillon
Senior United States District Court